



Customer No. 26308

PATENT

Docket No. 1759.15100-DIV DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Scribner et al.
Serial No: 10/617,976
Filed: 11 July 2003
For: Systems and Methods for Placing Materials into Bone

Group No.: 3732
Examiner: Philogene, Pedro

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER TO OBLIGATE
A DOUBLE PATENTING REJECTION (37 CFR 1.321(c))

Identification of Person(s) Making This Disclaimer

I, Daniel D. Ryan, Esq. (Registration No. 29,243)

(type or print names of all inventors or assigns or name of attorney signing disclaimer)

(a) represent that I am

 an inventor of this invention. an assignee of this invention.

WARNING: "If the patent or patent application is assigned to an organization, such as a corporation, partnership, university, government agency or similar entity, and the disclaimer is signed by the assignee, the assignee must comply with § 3.73(b)." Notice of Oct. 15, 1993, 1156 O.G. 54-61 at 56.

 a representative authorized to sign on behalf of the assignee identified below.

WARNING: See the above "WARNING".

 the attorney of record for this invention.

NOTE: The rules "permit an attorney or agent of record to sign a terminal disclaimer without the need to comply with § 3.73(b)." Notice of Oct. 15, 1993, 1156 O.G. 54-61, at 56.

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CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed as follows: Mail Stop RCE, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Linda S. Wenzel
Type or print name of person mailing paper

(Signature of person mailing paper)

Date: 4 October 2005

IDENTITY OF ASSIGNEE AND TITLE OF DISCLAIMANT
(if applicable)

The assignee is

Name of assignee Kyphon Inc.
Address of assignee 1221 Crossman Avenue
Sunnyvale, California 94089

Title of disclaimant authorized to sign on behalf of assignee: Attorney of Record

EXTENT OF DISCLAIMER'S INTEREST

The extent of the interest in this invention that the disclaimant owns is in:

- the whole of this invention.
 a sectional interest in this invention, as follows:

RECORDAL OF ASSIGNMENT IN PTO
(if applicable)

The assignment (see Attachment 1) was recorded on February 8, 1999. This application is a divisional application of Serial No. 09/804,107, which is a divisional application of Serial No. 09/134,323, now U.S. Patent No. 6,241,734.

Reel 9757

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- Authorization for recordal of the assignment is separately attached.
 A separate
 "ASSIGNMENT (DOCUMENT) COVER SHEET" or
 FORM PTO 1595 is also attached.

ESTABLISHING RIGHT OF ASSIGNEE TO TAKE ACTION
(if applicable)

Attached is a CERTIFICATE UNDER 37 CFR 3.73(b) establishing the right of the assignee to take action in this case.

DISCLAIMER

The terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173 of:

- United States Patent No. 6,241,734 as presently shortened by any terminal disclaimer,
 Any patent granted on application number _____

is hereby disclaimed, except as provided below, and it is agreed that any patent so granted on the above-identified application shall be enforceable only for, and during, such period that the legal title to said patent shall be the same as the legal title to

United States Patent No. 6,241,734

Any patent granted on application number _____

this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns

In making the above disclaimer, disclaimant does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of:

United States Patent No. 6,241,734, as presently shortened by any terminal disclaimer,

Any patent granted on application number _____

in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued in any matter or is terminated prior to expiration of its full statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

FEE STATUS
(37 CFR 1.20(d))

Other than a small entity-fee \$130.00.
 Small entity-fee \$65.00.

FEE PAYMENT

Attached is a check in the sum of \$ 130.00
 Charge Account 06-2360 for any fee deficiency.

Charge Deposit Account _____ the sum of \$ _____

A duplicate of this disclaimer is attached.

DECLARATION

- [] As I am not a person registered to practice before the Office, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under SECTION 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature of Disclaimant


SIGNATURE OF ATTORNEY OF RECORD

Daniel D. Ryan

(type or print name of attorney)

RYAN KROMHOLZ & MANION, S.C.

PO Box 26618

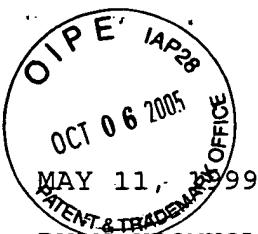
MILWAUKEE, WISCONSIN 53226

Date: 4 October 2005

Reg. No.: 29,243

Telephone: (262) 783 - 1300

Customer No. 26308



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
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RYAN KROMHOLZ & MANION, S.C.
DANIEL D. RYAN
633 WEST WISCONSIN AVENUE
MILWAUKEE, WI 53203

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/08/1999

REEL/FRAME: 9757/0854
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNEE'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNEE:
SCRIBNER, ROBERT

DOC DATE: 01/21/1999

ASSIGNEE:
REO, MICHAEL

DOC DATE: 01/21/1999

ASSIGNEE:
REILEY, MARK

DOC DATE: 01/20/1999

ASSIGNEE:
BOUCHER, RYAN

DOC DATE: 01/21/1999

ASSIGNEE:
KYPHON INC.
3110 CORONADO DRIVE
SANTA CLARA, CALIFORNIA 95054

SERIAL NUMBER: 09134323
PATENT NUMBER:

FILING DATE: 08/14/1998
ISSUE DATE:

RECEIVED
MAY 20 1999

Attachment 1

RYAN KROMHOLZ & MANION S.C.

9757/0854 PAGE 2

SHARON LATIMER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

A S S I G N M E N T

WHEREAS, Robert M. Scribner of Los Altos, California; Michael L. Reo of Redwood City, California; Mark A. Reiley of Piedmont, California; and Ryan Boucher of San Francisco, California (hereinafter referred to as ASSIGNORS), have invented and own a certain invention entitled Systems and Methods for Placing Materials into Bone for which application for Letters Patent of the United States has been executed on even date herewith (attorney's Docket No. 1759.15100);

WHEREAS, Kyphon Inc. of Santa Clara, California (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries;

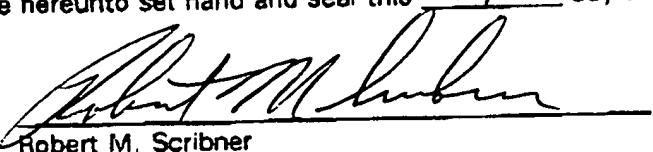
NOW THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment of ASSIGNEE to ASSIGNORS of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNORS hereby sell, assign and transfer to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

ASSIGNORS further covenant that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNORS and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day of

January, 1998.



Robert M. Scribner

State of _____)
)ss.
County of _____)

Personally appeared before me this _____ day of _____, 1998,
the above named Robert M. Scribner, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

* * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day
of JANUARY, 1998.

Michael L. Reo
Michael L. Reo

State of _____)
)ss.
County of _____)

Personally appeared before me this _____ day of _____, 1998,
the above named Michael L. Reo, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

* * * *

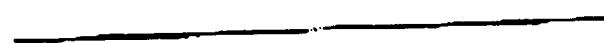
IN WITNESS THEREOF, I have hereunto set hand and seal this 20 day
of January, 1998. 
Mark A. Reiley

State of Cal)
County of Alameda)

Personally appeared before me this _____ day of _____, 1998.
the above named Mark A. Reiley, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

IN WITNESS THEREOF, I have hereunto set hand and seal this _____ day
of _____, 1998. 

State of _____)
County of _____)ss.

Personally appeared before me this _____ day of _____, 1998.
the above named Ryan Boucher, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

IN WITNESS THEREOF, I have hereunto set hand and seal this _____ day
of _____, 1998.

Mark A. Reiley

State of _____)
)ss.
County of _____)

Personally appeared before me this _____ day of _____, 1998,
the above named Mark A. Reiley, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

* * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day
of January, 1998.


Ryan Boucher

State of _____)
)ss.
County of _____)

Personally appeared before me this _____ day of _____, 1998,
the above named Ryan Boucher, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

* * * *